

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

**SUMMARY ORDER**

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals  
for the Second Circuit, held at the Daniel Patrick Moynihan  
United States Courthouse, 500 Pearl Street, in the City of  
New York, on the 18<sup>th</sup> day of April, two thousand eight.

**PRESENT:**

HON. CHESTER J. STRAUB,  
HON. REENA RAGGI,  
HON. DEBRA ANN LIVINGSTON,  
*Circuit Judges.*

DA HONG DAI,  
*Petitioner,*

v.

MICHAEL B. MUKASEY, UNITED STATES  
ATTORNEY GENERAL,<sup>1</sup>  
*Respondent.*

07-1572-ag  
NAC

<sup>1</sup> Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Michael B. Mukasey is automatically substituted for former Attorney General Alberto R. Gonzales as the respondent in this case.

1       **FOR PETITIONER:**               Dehai Zhang, New York, New York.  
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3       **FOR RESPONDENT:**           Peter D. Keisler, Assistant Attorney  
4                                       General, Lisa M. Arnold, Senior  
5                                       Litigation Counsel, Erica B. Miles,  
6                                       Attorney, Christopher J. Keeven, Law  
7                                       Clerk, Office of Immigration  
8                                       Litigation, United States Department  
9                                       of Justice, Washington, D.C.  
10  
11

12               UPON DUE CONSIDERATION of this petition for review of a  
13 Board of Immigration Appeals ("BIA") decision, it is hereby  
14 ORDERED, ADJUDGED, AND DECREED that the petition for review  
15 is DENIED.

16               Petitioner Da Hong Dai, a native and citizen of China,  
17 seeks review of a March 22, 2007 order of the BIA affirming  
18 the August 2, 2005 decision of Immigration Judge ("IJ")  
19 Sarah Burr denying Dai's applications for asylum,  
20 withholding of removal and relief under the Convention  
21 Against Torture ("CAT"). *In re Da Hong Dai*, No. A 96 241  
22 752 (B.I.A. Mar. 22, 2007 ), *aff'g* No. A 96 241 752 (Immig.  
23 Ct. N.Y. City Aug. 2, 2005). We assume the parties'  
24 familiarity with the underlying facts and procedural history  
25 in this case.

26               When the BIA agrees with the IJ's conclusion that a  
27 petitioner is not credible and, without rejecting any of the  
28 IJ's grounds for decision, emphasizes particular aspects of  
29 that decision, this Court reviews both the BIA's and IJ's

1       opinions - or, more precisely, the Court reviews the IJ's  
2       decision including the portions not explicitly discussed by  
3       the BIA. See *Yun-Zui Guan v. Gonzales*, 432 F.3d 391, 394  
4       (2d Cir. 2005). We review the agency's factual findings,  
5       including adverse credibility determinations, under the  
6       substantial evidence standard, treating them as "conclusive  
7       unless any reasonable adjudicator would be compelled to  
8       conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B); see  
9       *Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004),  
10      *overruled in part on other grounds by Shi Liang Lin v. U.S.*  
11      *Dep't of Justice*, 494 F.3d 296, 305 (2d Cir. 2007) (*en banc*).  
12      However, we will vacate and remand for new findings if the  
13      agency's reasoning or its fact-finding process was  
14      sufficiently flawed. *Cao He Lin v. U.S. Dep't of Justice*,  
15      428 F.3d 391, 406 (2d Cir. 2005).

16             We conclude that the agency's adverse credibility  
17      finding here is supported by substantial evidence. The IJ  
18      determined that the two intra-uterine contraceptive device  
19      ("IUD") booklets that Dai submitted in support of her claim  
20      were not genuine and were thus fatal to her credibility.  
21      See *Siewe v. Gonzales*, 480 F.3d 160, 170-71 (2d Cir. 2007)  
22      (under the maxim of *falsus in uno, falsus in omnibus* (false

1 in one thing, false in everything) "a single false document  
2 or a single instance of false testimony may (if attributable  
3 to the petitioner) infect the balance of the alien's  
4 uncorroborated or unauthenticated evidence"); *Borovikova v.*  
5 *U.S. Dep't of Justice*, 435 F.3d 151, 157-58 (2d Cir. 2006)  
6 (approving agency's reliance on firmly-grounded expert  
7 finding of document fraud to reach conclusion that applicant  
8 was dissembling in her oral testimony).

9 In reaching this conclusion, the IJ reasonably relied  
10 on an expert witness's report and detailed testimony that  
11 (1) someone had deliberately manipulated the entries of the  
12 first booklet by erasing and overwriting two of the dates;  
13 (2) despite the second booklet containing dates that spanned  
14 two and one-half years, the nature of the entries indicated  
15 that they had been placed in the booklet at the same time;  
16 and (3) the ink used to overwrite the entries in the first  
17 booklet appeared (to a 90% certainty) to be the same as the  
18 ink used in the second booklet. This expert testimony  
19 provides substantial evidence for the IJ's finding that the  
20 documents were inauthentic and unreliable. The IJ's  
21 determination was, in fact, the functional equivalent of a  
22 "valid finding of fraud," and, because grounded in

1 acceptable expert opinion, presents none of the concerns  
2 about "unjustified assumptions and unsupported speculation"  
3 noted in *Souleymane Niang v. Mukasey*, 511 F.3d 138, 146 (2d  
4 Cir. 2007) (citing *Siewe* in observing that although an  
5 expert finding of fraud is not always necessary to support  
6 an IJ finding of document inauthenticity, such a finding  
7 cannot be based on pure speculation).

8 Dai argues that the IJ's authenticity concerns about  
9 the IUD booklets and the dates were, in any event, not  
10 material to the prime issue of her claim, *i.e.*, whether she  
11 had had a forced abortion. We are not convinced. The IUD  
12 booklet was offered into evidence to establish that Dai was  
13 indeed pregnant in May 2000. Because that pregnancy is the  
14 very one she claims she was forced to terminate, the agency  
15 could reasonably conclude that fraudulent entries in the IUD  
16 booklets were material to undermining her claim of  
17 persecution through forced abortion. Dai's claim that the  
18 agency failed to consider her testimony that she did not  
19 know that the booklets had been altered, *see Siewe*, 480 F.3d  
20 at 171 (*falsus in uno* does not apply where alien does not  
21 know or have reason to know of lack of authenticity), was  
22 not exhausted before the BIA, and we therefore lack

1 jurisdiction to review it. See *Lin Zhong v. U.S. Dep't of*  
2 *Justice*, 480 F.3d 104, 119-20 (2d Cir. 2007).

3 Taken as a whole, the agency's adverse credibility  
4 finding was supported by substantial evidence. Because the  
5 only evidence of a threat to Dai's life or freedom or a  
6 likelihood of torture depended upon her credibility, the  
7 adverse credibility determination in this case necessarily  
8 precludes success on her claims for withholding of removal  
9 and CAT relief. See *Paul v. Gonzales*, 444 F.3d 148, 156 (2d  
10 Cir. 2006); *Xue Hong Yang v. U.S. Dep't of Justice*, 426 F.3d  
11 520, 523 (2d Cir. 2005).

12 For the foregoing reasons, the petition for review is  
13 DENIED. As we have completed our review, the pending motion  
14 for a stay of removal in this petition is DISMISSED as moot.  
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16 FOR THE COURT:  
17 Catherine O'Hagan Wolfe, Clerk  
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By: \_\_\_\_\_